

**FILED**  
08 JAN -4 AM 9:47  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ARNOLD & PORTER LLP  
SHARON DOUGLASS MAYO (Bar No. 150469)  
90 New Montgomery Street, Suite 600  
San Francisco, California 94105  
Telephone: 415.356.3000  
Facsimile: 415.356.3099  
sharon.mayo@aporter.com

ARNOLD & PORTER LLP  
RANDALL K. MILLER (subject to admission *pro hac vice*)  
1600 Tysons Boulevard, Suite 900  
McLean, Virginia 22102  
Telephone: 703.720.7000  
Facsimile: 703.720.7399  
randall.miller@aporter.com

*Attorneys for Plaintiffs*  
*Perseus Distribution, Inc.*  
*and Perseus Books, L.L.C.*

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**CW**

PERSEUS DISTRIBUTION, INC. and  
PERSEUS BOOKS, L.L.C.,

Plaintiffs,

v.

CF COMMUNICATIONS, LLC d.b.a  
TELEKENEX, INC.,

Defendant.

**CV 08 0044**

Case No.

DECLARATION OF RANDALL K.  
MILLER IN SUPPORT OF PLAINTIFFS'  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND MOTION  
FOR PRELIMINARY INJUNCTION

I, RANDALL K. MILLER, declare under penalty of perjury as follows:

1. I am a partner with the law firm of Arnold & Porter LLP and counsel to Plaintiffs  
Perseus Distribution, Inc. and Perseus Books LLC in the above captioned matter. I have personal

**ORIGINAL**

1 knowledge of the following facts and, if called and sworn as a witness, would competently testify  
2 thereto.

3 2. I submit this Declaration to substantiate the efforts made to provide advance notice  
4 to Defendant CF Communications, LLC d.b.a. Telekenex, Inc. ("Telekenex") of Plaintiffs' intent to  
5 seek a temporary restraining order in this matter.

6 3. On December 19, 2007, I sent a letter to Robert Finley, the Chief Financial Officer  
7 of Defendant Telekenex, in which I summarized Plaintiffs' claim and demanded that Telekenex  
8 permit Plaintiffs to "port" their telephone number to their new telecommunications carrier. I asked  
9 for written confirmation of Mr. Finley's intent to comply. I informed Mr. Finley that if we did not  
10 receive such confirmation, Plaintiffs intended to "move for an emergency restraining order."

11 4. On December 20, 2007, I left Mr. Finley a telephone message repeating Plaintiffs'  
12 intent to pursue a temporary restraining order.

13 5. On January 2, 2008, I wrote Mr. Finley another letter stating that because Telekenex  
14 had not complied with our demand, Plaintiffs intended to pursue a court order. The letter stated  
15 "please take notice that we intend to seek an emergency restraining order against Telekenex in the  
16 U.S. District Court for the Northern District of California." The letter also stated "Please let me  
17 know if you are or will be represented by counsel so that I can provide your counsel notice of the  
18 hearing date and copies of the court papers."

19 6. On January 3, 2008, I had three telephone conversations with Mr. Finley. Mr. Finley  
20 confirmed receipt of the letters and messages described above. I repeated our intent to seek a  
21 restraining order and again asked if Telekenex intended to retain counsel. Mr. Finley responded  
22 that he did not intend to retain counsel. We discussed possible settlement options.

23 7. Later on January 3, I sent Mr. Finley a settlement proposal by email and informed  
24 him that if we were unable to reach a settlement, Plaintiffs would proceed to seek a court order.  
25 The email stated: "In the event that you do not agree with the document, as discussed, we will seek  
26 a temporary restraining order tomorrow morning. In particular, we will file our papers tomorrow  
27 morning at 9:00 a.m. at the federal courthouse located at 450 Golden Gate Avenue, San Francisco,  
28

1 California. Immediately upon assignment to a judge, we will be seeking the TRO." Mr. Finley  
2 responded to the email and rejected our settlement proposal.  
3

4 I declare under penalty of perjury and of the laws of the United States of America that the  
5 foregoing is true and correct, and that this declaration was executed at 8:55 pm EST on January 3,  
6 2008.

7   
8 RANDALL K. MILLER  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28